IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.06.2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRIMINAL REVISION CASE No.2 of 2004

1. C.K.P. Hariselvan
2. Sivakumar
3. P.Balusamy ... Petitioners/Accused 1 to 3

Vs.

State represented by
The Inspector of Police,
B-9 Saravanampatty Police Station,
Coimbatore City.
in Crime No.428 of 2002 ... Respondent/Complainant

Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. against the order of the learned Judicial Magistrate No.II, Coimbatore made in Crl.M.P.No.200 of 2003 in C.C.No.454 of 2002 on the file of the learned Judicial Magistrate No.II, Coimbatore.

For Petitioners - Mr.Rahamath Ali

For Respondent - Mr.N.Kumanan
Govt. Advocate (Crl.Side)

O R D E R

This Revision has been preferred against the order of the learned Judicial Magistrate No.II, Coimbatore made in Crl.M.P.No.200 of 2003 in C.C.No.454 of 2002 on the file of the learned Judicial Magistrate No.II, Coimbatore.

2. The brief facts of the case are as follows:-

The Respondent police filed a final report against the petitioners/Accused 1 to 3 for the alleged offence under Section 384 I.P.C., alleging that on 09.03.2002, the first petitioner/A1 forcibly snatched two promissory notes, each valued at Rs.2,50,000/- and a cheque for Rs.5,00,000/- issued by the first petitioner/A1 to one K.Balakumar. In the final report, 10 witnesses have been cited

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and along with the final report, three documents were purported to have been filed. The case has been registered based on a complaint dated 29.04.2002, given by one Balakumar.

3. The brief facts of the complaint are as follows:

(i) On 22.09.1997, the first petitioner/A1 received Rs.5,00,000/- from the Complainant, Balakumar and issued an undated cheque for the same bearing No.502606 drawn on City Union Bank Limited, Coimbatore along with two Promissory Notes, each valued at Rs.2,50,000/- to him, promising to pay Rs.15,000/- towards interest, every month.

(ii) Since A1 failed to pay the principal amount and the interest on 07.03.2002, the said Balakumar demanded from A1, Rs.5,00,000/-. A1 promised him to pay Rs.5,00,000/- on 09.03.2002 at 12.00 noon at his shop, called Singapore Jewellery. On 09.03.2002, Balakumar and one Sivashanmugam went to Maniyakkaranpalayam at about 11.45 a.m. At that time, they met one Krishnasamy, known to them and thereafter Krishnasamy took Sivashanmugam with him to his house to discuss some important matter. Then Balakumar went alone to the shop of A1. At the shop of A1, A2 and A3 and one Vijayakumar and Kannan were present. On seeing Balakumar, A1 is said to have scolded him in a filthy language. When Balakumar questioned A1, he attacked Balakumar with his hands. Then A1, A2 and A3 fisted on Balakumar on his face and A1 snatched two Promissory notes and the cheque from Balakumar. When Vijayakumar and Kannan tried to intervene, A1 warned them not to interfere in the matter. Thereafter, at about 1.30 p.m., he went to a private hospital and took treatment and thereafter took rest in his house.

(ii) On 11.03.2002, he lodged a complaint to the Deputy Commissioner of Police, based on which, the Inspector of Police, B-9 Saravanampatti Police Station, called both the parties for an enquiry on 12.03.2002. Then, A1 promised to compromise the matter by paying the amount in ten days. But he failed to pay the money as promised. Hence, Balakumar filed a complaint before Deputy Commissioner of Police on 29.04.2002, at 1.00 p.m.

3. The Petitioners/Accused filed a petition for discharge before the learned Judicial Magistrate No.II, Coimbatore on the ground that there is no prima facie material to frame a charge against the accused, therefore, they should be discharged. The learned Magistrate dismissed the same on the ground that there is prima facie case on the allegations made by Balakumar. Aggrieved over the same, this Revision is filed.

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4. Mr.Rahamath Ali, learned Counsel for the Petitioners/Accused would contend that the complaint preferred by Balakumar is a concocted one, since it suffers from many falsities and not supported by any documentary evidence and the same has been filed only to threaten the petitioners/accused and to extract money from them.

5. At the outset, when the occurrence took place, that is on 09.03.2002, at 12.00 noon, the First Information Report was lodged only on 29.04.2002, after about 50 days. Though, it is stated in the complaint that on 11.03.2002, a complaint was lodged before the Deputy Commissioner of Police and on the basis of that complaint, the Inspector of Police, B-9 Saravanmpatti Police Station, enquired both the parties and the accused promised to settle the amount alleged in the complaint dated 11.03.2002, the list of documents filed in the chargesheet is not produced before the Court. No explanation is forthcoming as to why the complaint dated 11.03.2002 to the Deputy Commissioner of Police, which itself is a belated complaint was not produced before the Court. Therefore, the allegation that on 11.03.2002, two days after the occurrence, a complaint was lodged by Balakumar before the Deputy Commissioner of Police must be false. Actually the complaint has been lodged only after 50 days, that is on 29.04.2002.

6. In the complaint, it is stated by Balakumar that A1 snatched two Promissory notes and a cheque issued by him. But, when P.W.1 was examined in chief on 20.01.2004, after this Revision was admitted by this Court, he stated that A2 and A3 snatched the two Promissory notes and the cheque. Yet another important contradiction is that the amount was given on 22.09.1997. Though, A1 promised to pay Rs.15,000/- as interest, according to the complainant, no interest was paid by A1 and that is why on 07.03.2002, the complainant demanded back his money. If really, the complainant demanded his money, he should have demanded back the principal amount Rs.5,00,000/- with interest. But the specific case of the complainant is that he wanted only Rs.5,00,000/- lakhs, nearly after five years.

7. In the 161 statement of the said Balakumar, he has stated that he has the xerox copies of the Promissory Notes and the cheque, said to have been snatched by A1. But during the investigation, he has not produced the same and the same has not been produced in the Court. No explanation is forthcoming as to what happened to the two Promissory notes and the cheque sought to have been snatched by A1. Neither the documents were recovered nor there is an explanation as to what happened to the said documents. In such a case, either the property said to have been forcibly taken away, must be recovered or there must be an explanation as to what happened to the property.

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In the absence of both, the allegation of an offence under Section 384 I.P.C. is unbelievable.

8. Section 383 I.P.C. reads as follows:

> "Extortion : - Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Section 384 I.P.C. reads as follows:

> "Punishment for extortion : Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

What is Valuable Security is defined under Section 30 as follows:-

> "Valuable Security: The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

9. As far as two Promissory notes are concerned, they are dated 22.09.1997 and they become invalid on and from 22.09.2000. Similarly, a cheque issued on the said day is invalid 6 months thereafter. Therefore, what were said to have been snatched by A1 are not valuable securities in the correct sense as defined under Section 30 I.P.C. Therefore, Section 384 I.P.C. is not attracted, as far as the accused are concerned. Though, these are some of the points raised before the learned Judicial Magistrate, he has simply dismissed the same without assigning any reason.

11. In 1989 1 SCC 715 (Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and another), the Honourable Supreme Court has held as follows :-

"13. In Union of India v. Prafulla Kumar Samal, Fazal Ali, J. summarised some of the principles : [SCR pp.234-35 : SCC p.9 ; SCC (Cri) pp.613-14, para 10]

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(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

14. These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court

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has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

12. The law is well settled that while framing charges under Section 227 Cr.P.C., when the accused files an application for discharge, the Trial Court has undoubted power to sift and weigh the evidence, to find out whether there is prima facie case made out against the accused and even in the case of grave suspicion against the accused, charges can be framed. But on the other hand, if two views are equally possible and the Judge is satisfied that the evidence produced before him will give rise to some suspicion against the accused, the Judge will be fully within his right to discharge the accused, but if a grave suspicion could be raised, charges shall be framed as has been held by the Honourable Supreme Court in the decision cited supra.

13. In the present case, even though the Complainant was allegedly attacked by three persons as mentioned above, he has not gone to the Government Hospital for treatment. But, on the other hand, he has gone to a private hospital, where three tablets were prescribed, one tablet is an antibiotic, the other is for pain relief and the third one is for acidity.

14. But the said prescription cannot be given much weight to form the opinion of grave suspicion as the medicines prescribed by the said Doctor are not for any external injury. Another important feature is that though the prescription is dated 09.03.2002, viz., date of occurrence, on the reverse of the prescription while indicating the external injuries i.e., (i) swelling in both the eye lids and eye brows and (ii) abrasion over the right clavicle, the Doctor has put his initial as on 24.05.2002, which is two and half months after the date of occurrence, which only goes to show that the prescription is only a concocted document and no credence can be attached to the same.

15. As already stated, Section 384 cannot be attracted, since the documents alleged to be snatched away from the complainant by the accused cannot be considered either as "property" or as "valuable securities". This case is an example as to how a false case can be foisted against persons with whom one has a motive or enmity.

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In the result, the Criminal Revision Petition is allowed, and the petitioners will be discharged.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Judicial Magistrate No.2,
Coimbatore.

2.-do- Thro' The Chief Judicial Magistrate,
Coimbatore.

3.The Inspector of Police,
State of Tamilnadu,
B-9 Saravanampatty Police Station,
Coimbatore City.

4. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.H.Rajasekaran, Advocate, SR.27976

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